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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 JOSHUA J. TRUEBLOOD,

11 Plaintiff,

12 v.

13 OFFICER SGT. CAPPOLA, et al.,

14 Defendant.

CASE NO. 3:19-cv-05816-RBL-JRC

ORDER ON PLAINTIFF'S  
SECOND MOTION TO APPOINT  
COUNSEL

15 This matter is before the Court on plaintiff's second Motion to Appoint Counsel. *See* Dkt.  
16 28. On December 13, 2019, this Court denied plaintiff's first motion to appoint counsel (Dkt. 14)  
17 because plaintiff had not demonstrated exceptional circumstances. Dkt. 27. Two weeks later, on  
18 December 26, 2019, plaintiff filed the second motion to appoint counsel. Dkt. 28. As plaintiff has  
19 not set forth any additional evidence supporting his motion, and has not provided any additional  
20 reasons, the motion is again denied.

21 In seeking appointment of counsel, plaintiff states the following reasons:

22 (1) The correctional facility where plaintiff resides does not have a law library;

23 (2) Plaintiff is proceeding IFP and cannot afford a lawyer;  
24

1 (3) The issues are complex;

2 (4) Plaintiff has contacted pro bono attorneys who declined to represent him;

3 (5) Plaintiff has limited knowledge of the law.

4 Dkt. 28, at 1-2. In the December 13th Order, this Court addressed these same issues in denying  
5 plaintiff's motion:

6 There is no constitutional right to appointed counsel in a § 1983 civil action, and  
7 whether to appoint counsel is within this Court's discretion. *Storseth v. Spellman*,  
8 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$ 292,888.04 in U.S.*  
9 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995). Appointment of counsel for indigent  
10 civil litigants under 28 U.S.C. § 1915(e)(1) requires "exceptional circumstances."  
11 *See Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing former 28 U.S.C.  
12 § 1915(d) (1996)), *overruled on other grounds*, 154 F.3d 952 (1998). To decide  
whether exceptional circumstances exist, the Court must evaluate "both 'the  
likelihood of success on the merits [and] the ability of the [plaintiff] to articulate  
his claims *pro se* in light of the complexity of the legal issues involved.'"  
*Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v.*  
*Look*, 718 F.2d 952, 954 (9th Cir. 1983)). "Neither of these factors is dispositive  
and both must be viewed together[.]" *Id.*

13 Here, plaintiff has not raised novel or particularly complex issues—rather, his  
14 complaint raises fairly straightforward issues involving whether corrections  
15 officers were deliberately indifferent to his safety in violation of the Eighth  
16 Amendment. *See* Dkt. 9. Moreover, at this early stage in the proceedings, when  
defendants have yet to file any answer or motion, the Court cannot say that there  
is a likelihood of success on the merits.

17 Plaintiff asserts that he has little knowledge of the law as a basis to grant counsel.  
18 Dkt. 14, at 1. However, circumstances that are common to *pro se* plaintiffs—such  
19 as lack of legal training—do not amount to the exceptional circumstances  
20 necessary to appoint counsel. *Wood v. Housewright*, 900 F.2d 1332, 1335–36  
(9th Cir. 1990).

21 [ . . . . ]

22 Plaintiff also states that his institution does not have a law library. *See* Dkt. 14, at  
23 1. A plaintiff's statement that he lacks law library access, standing alone, will not  
24 automatically result in the appointment of counsel. *See, e.g., Williams v.*  
*Waddington*, C07-5216 RBL-KLS, 2007 WL 2471674, at \*1 (W.D. Wash. Aug.  
29, 2007) (finding that plaintiff had not shown that the legal issues in his case  
were complex or that he was unable to articulate his claims *pro se*, even though he  
could not access a law library); *Moore v. Philips*, 10-cv-3273, 2010 WL 5067823,

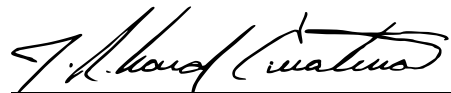
1 at \*2 (C.D. Ill. Dec. 7, 2010) (the fact that there was no law library access did not  
2 merit the appointment of counsel at an early stage in the litigation); *Long v. Doe*,  
3 08-cv-478-SLC, 2008 WL 4950080, at \*2 (W.D. Wisc. Nov. 18, 2008) (although  
4 lack of access to a law library would make prosecution of his case more difficult,  
5 under the circumstances, it would not prevent plaintiff from litigating his case).  
6 Some districts have noted additional circumstances, beyond the mere lack of law  
7 library access, that could merit granting such a request. *See Alvarez v. Kristo*, cv-  
8 08-2226-PHX-DGC, 2009 WL 539676, at \*1 (D. Ariz. March 4, 2009) (in  
9 addition to no law library access, petitioner presented a novel and significant issue  
10 and there were no other available forms of legal assistance); *see also Covarrubias*  
11 *v. Gower*, C-13-4611 (EMC), 2014 WL 342548, at \*1 (N.D. Cal. Jan. 28, 2014)  
12 (noting that there was no indication of a lack of other options, such as a legal  
13 paging system or ability to transfer to an institution with a law library). Here,  
14 however, plaintiff does not demonstrate that lack of access to a law library has  
15 prevented him from litigating his case.

9 Dkt. 27, at 2-4.

10 Plaintiff has not provided any additional evidence to support his motion, except that he  
11 included the letters from attorney's declining to take his case. *See* Dkt. 28, at 3-6. This Court  
12 previously notified plaintiff that denying his motion *without prejudice* means that plaintiff may  
13 renew his motion at a later date if he is able to establish exceptional circumstances. *See* Dkt. 27,  
14 at 4. Plaintiff's current motion is again being denied *without prejudice*. However, plaintiff should  
15 not file a new motion for counsel by merely repeating the reasons that have already been denied.

16 Accordingly, plaintiff's Motion for the Appointment of Counsel (Dkt. 28), is hereby  
17 DENIED without prejudice.

18 Dated this 24th day of January, 2020.

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22 J. Richard Creatura  
23 United States Magistrate Judge  
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